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VIA CM/ECF

The Honorable Richard M. Gergel, U.S.D.J.
U.S. District Court for the District of South Carolina
J. Waites Waring Judicial Center
83 Meeting Street
Charleston, South Carolina 29401

**Re: *BASF Corporation v. AIU Insurance Company, et al.*, Case No. 2:24-cv-00993-RMG
("District of South Carolina Action"); and**

***Certain Underwriters at Lloyd's London, et al. v. BASF Corporation, et al.*, Case No.
1:24-cv-01684 ("MDL Action")**

Dear Judge Gergel,

This firm serves as coverage counsel to BASF Corporation ("BASF") in the above-referenced actions (collectively, "Actions"). We write to request a telephonic conference regarding case management, pursuant to Local Civil Rule 16.01 and 16.02(A). The District of South Carolina Action was filed by BASF on February 27, 2024, with an amended complaint filed on May 22, 2024, and is pending before Your Honor. On March 4, 2024, less than two weeks after BASF filed the District of South Carolina Action, Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies ("Lloyd's") filed a competing action in New York state court, involving substantially similar parties and the same legal issues.

The Lloyd's New York state court action was subsequently removed to the U.S. District Court for the Southern District of New York and, on March 7, 2024, BASF filed a Notice of a Potential Tag Along Action, requesting that the Judicial Panel on Multidistrict Litigation ("JPML") transfer it to the multidistrict litigation pending before Your Honor in the U.S. District Court for the District of South Carolina, captioned *In re Aqueous Film-Forming Foams (AFFF) Products Liability Litigation*, MDL No. 2873 ("AFFF MDL"). On March 28, 2024, the JPML issued a Conditional Transfer Order, which the insurers moved to vacate on April 4, 2024. On August 1, 2024, that request was denied, and the JPML transferred the New York action to the AFFF MDL.

The District of South Carolina Action and the MDL Action are now both pending before Your Honor and are in the initial stages of litigation. The Actions involve substantially similar parties, and the same underlying facts and legal issues, including whether BASF is owed insurance coverage from the insurers for thousands of underlying lawsuits, the majority of which are consolidated in the AFFF MDL pending before Your Honor.

For the sake of preserving party and judicial resources, and to avoid any inconsistent rulings, BASF writes to request that all pretrial proceedings in the two Actions be coordinated. This would include, but not be limited to, entering a scheduling order that puts the two Actions on the same track, requires joint discovery for efficiency purposes, and combines the hearings on any dispositive and/or other pretrial motions to avoid inconsistent rulings.

On August 2, 2024 counsel for BASF reached out to counsel for the insurers in both Actions, pursuant to Local Rule 7.02, seeking their consent to this request. On Tuesday, August 6, 2024, the parties participated in a meet and confer call to discuss this request in more detail. Ultimately, the insurers advised that they are unwilling to consent to this request at this time.

For the above reasons, BASF respectfully requests that the Court exercise its sound judgment and discretion to coordinate the pretrial proceedings in these Actions as described herein, and schedule a telephonic conference with the parties to discuss the details with respect to same.

Yours respectfully,

LOWENSTEIN SANDLER LLP

/s/ Lynda A. Bennett

Lynda A. Bennett (admitted *Pro Hac Vice*)

ROBINSON, BRADSHAW & HINSON, P.A.

/s/ David C. Kimball

David C. Kimball (Fed. ID No. 10475)

Cc: All Parties Receiving Notice via ECF